



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT Application of
Saville, et. al.

Group Art Unit: Unknown

U.S. Serial No. 10/797,020

Examiner: Unknown

Filed: March 11, 2004

Att. Docket No.: 95772-1440

For: ENHANCEMENT OF ENZYME ACTIVITY THROUGH PURIFICATION AND
IMMOBILIZATION

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August 17, 2004

**PETITION UNDER 37 C.F.R. § 1.47(a) FOR CO-INVENTOR TO FILE THE
PRESENT APPLICATION ON BEHALF OF HIMSELF AND
ON BEHALF OF NON-SIGNING CO-INVENTOR**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Named co-inventor Bradley A. Saville hereby petitions the U.S. Patent and Trademark Office under 37 C.F.R. § 1.47(a) to file the above-identified application for regular patent application on behalf of himself and on behalf of named co-inventor, Mikhail I. Khavkine, who has refused to sign the Oath.

The required Rule 17(h) petition fee of \$130 is enclosed. If this fee is missing or deficient, please charge any deficiency to our Deposit Account No. 50-0687 under Order No. 95772.

In accordance with Rule 47(a) and MPEP § 409.03(a):

(A) All available joint inventors have signed the attached Oath. The signature block for joint inventor Mikhail I. Khavkine has been left blank and should be treated as having been signed by all available joint inventors on behalf of Mr. Khavkine.

(B) Mr. Saville submits herewith conclusive proof that Mr. Khavkine refused to execute the application papers as sworn to in the attached Affidavit Proving Co-Inventor Refused to Execute Application Papers Under 37 C.F.R. § 1.47(a). This Affidavit was signed by the person to whom the refusal to sign the applications was made, as required by MPEP 409.03(d).

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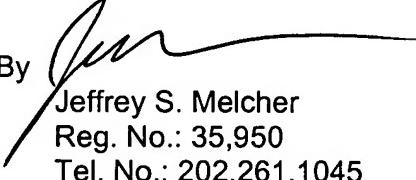
(C) The last known address of the non-signing co-inventor is:

Mikhail I. Khavkine
257 Roxton Road
Oakville, ON
L6H 7K3, Canada

Mr. Saville has complied with the requirements of Rule 47(a) and MPEP § 409.03(a). Accordingly, Mr. Saville respectfully requests that this Petition be granted and that he be granted permission to file the above-identified application for regular patent application on behalf of himself and on behalf of the non-signing co-inventor.

Respectfully submitted,
Manelli Denison & Selter, PLLC

By



Jeffrey S. Melcher

Reg. No.: 35,950

Tel. No.: 202.261.1045

Fax. No.: 202.887.0336

Customer No. 20736
2000 M Street, N.W. , 7th Floor
Washington, D.C. 20036-3307



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* * * *

**AFFIDAVIT PROVING CO-INVENTOR REFUSED TO EXECUTE APPLICATION
PAPERS UNDER 37 C.F.R. § 1.47(a)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Andrew Desbarats, declare and state as follows.

I am the Business Officer of Immortazyme Company (formerly Advanced Biochemical Corp.) located at #3-1100 Invicta Dr., Oakville, ON, L6H 2K9, Canada.

Mikhail Khavkine, a co-inventor of the above-identified application, has refused to execute the present application papers, including the inventor's oath. Below is the text of communications between Mr. Khavkine and I. Attached in Exhibit A is a letter that was sent to Mr. Khavkine. I did not receive a response from Mr. Khavkine for this letter.

It is important to note that Immortazyme is in the process of using this invention to commercialize a new product in an extremely competitive market. The growth of this market and the size and strength of the competitors that are active in this market create an environment where confidentiality, before publication of the patents, is particularly important. For this reason, I requested that Mr. Khavkine read and sign the patent application documents in the presence of an Immortazyme employee.

The location, time and duration of the meeting was to be decided by Mr. Khavkine, providing a reasonable opportunity for the co-inventor to carry-out his obligations.

The following is a chronology of communications between Mr. Khavkine and I in the matter of executing the present patent application. These notes were recorded by myself directly after each of the telephone conversations with Mr. Khavkine. In the case of e-mails and letters, a copy of the original is included.

February 27th, 2004 – Telephone conversation between M. Khavkine and Andrew Desbarats

First communication regarding signing of the patent applications.

"Telephone call to Mr. Khavkine requesting his signature on the Immortazyme Patent Applications numbered 1439 and 1440 [present invention], that are due for US patent application and PCT application on March 13th 2004.

Mike [Khavkine] requested the patent documentation to read before signing it. Andrew indicated that Mr. Khavkine would be able to read the documents as soon as they had been prepared. The documents were to be prepared by the 9th of March."

March 10th, 2004 – Telephone conversation between M. Khavkine and Andrew Desbarats

I informed Mr. Khavkine that the patent documents were ready to sign.

"Mr. Desbarats called Mikhail Khavkine at 1:20 pm. Mr. Desbarats indicated that the documentation was prepared and ready for signature. Mr. Desbarats suggested a meeting at a time and location that was convenient so that Mr. Khavkine could read the documents and sign them.

Mr. Khavkine indicated that it would be better for Mr. Desbarats to mail the documents to him. He would read them, consult with his lawyer and depending on the advice of his lawyer, he may or may not sign the documents.

Mr. Desbarats indicated that due to the sensitive nature of the inventions described by the documents, the company felt that it was important to ensure that the documents remained within the supervision of the company. Mr. Desbarats indicated that Immortazyme would much prefer to have the documents read and signed in the presence of one of Immortazyme's employees.

Mikhail was adamant that he would not sign the documents without having a copy of the documents in his possession.

In view of the company's desire to maintain all copies of the document, Mr. Desbarats indicated that he would consult with our patent agent and others at the company to determine next steps since Mr. Khavkine refused to sign the documents under the conditions required by the company for purposes of privacy and confidentiality. Mr. Desbarats agreed to get back to Mikhail within the next few days with a plan under which we could arrange signing of the documents."

March 12th, 2004 – e-mail message received by Andrew Desbarats from Mikhail Khavkine.

Dear Mr. Desbarats:

Unfortunately, I won't be available tomorrow at my home #. I am going to be away for the next three weeks. Please, feel free to communicate using a lettermail. I promise you fast response and complete attention to the correspondence. Please, be advised that all further communication will be carried on in writing. No phone calls please.

Truly,

Dr. Mikhail Khavkine.

March 16th, 2004 – Letter sent to Mikhail Khavkine by registered mail, requesting again that the patent documents be signed. Please see Exhibit A.

There has been no response to this letter and no further communication with Mr. Khavkine. I have not been able to reach Mr. Khavkine by telephone.

Mr. Khavkine has refused to sign the required patent application documents. Immortazyme has provided Mr. Khavkine with reasonable requests to arrange for the signing of the required documents in light of the need for confidentiality in order to be successful in commercializing the technology.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Andrew Desbarats.....Place Oakville, ON.....Date July 14, 2004

Andrew Desbarats
Business Officer, Immortazyme

Sworn before me
at the Town of Oakville,
in the Province of Ontario,
this 14th day of July, 2004.

Haxell

A Commissioner of Oaths, Solicitor, Notary.

Haxell & Smith
Lawyers Practising in Association
1276 Cornwall Road, Unit C
Oakville, Ontario
L6J 7W5

Exhibit A – Letter from Immortazyme to Mr. Khavkine, March 16, 2004.

Immortazyme



March 16, 2004

Mikhail Khavkine
257 Roxton Rd.
Oakville, ON
L6H 7K3

Dear Mr. Khavkine

This is Exhibit A to the
Affidavit of Andrew Desbarats,
SWEORN before me, this
of July 2004 14 day
A Commissioner, etc.

Pursuant to our telephone conversations that took place on February 27th and March 10th regarding the signing of US and PCT patent applications, Immortazyme would like to arrange for you to read and sign the necessary documents. These patent applications (titled "Enhancement of Enzyme Activity by Selective Purification" and "Enhancement of Enzyme Activity Through Purification and Immobilization") require signatures from all inventors. Since both you and Dr. Saville are the inventors listed on the patents mentioned above, Immortazyme is requesting signatures from both of you.

In our telephone conversation on March 10th, you had mentioned that you were not willing to meet with us to read and sign the documents. We are hoping you will reconsider in order that the patent applications can be submitted in a timely manner. While your e-mail, dated March 11th at 4:27 pm, indicated that you would be out of town for 3 weeks, and would not be available at your home telephone number as of March 12th, we are hoping you will sign the documents upon your return to Oakville.

Please do not hesitate to contact me by telephone or mail to arrange a suitable time to meet.

Sincerely,

A handwritten signature in black ink that reads "Andrew Desbarats".

Andrew Desbarats
Business Officer